

**LOURDES MCCORMACK AND BLAISE MCCORMACK,
COMPLAINANTS, VS. HON. JOSE G. MONTEMAYOR, PRESIDING
JUDGE, MUNICIPAL TRIAL COURT, BRANCH I, ANGELES CITY,
RESPONDENT.**

Adm. Matter No. MTJ-89-269. July 23, 1990

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PER CURIAM:

These administrative complaints were filed by Lourdes and Blaise McCormack against the following: (1) Deputy Sheriff Tomasito Lising of the Municipal Trial Court, Branch I, Angeles City for misconduct, gross inefficiency and neglect of duty; and (2) Municipal Trial Court Judge Jose G. Montemayor, of the same branch for alleged grave partiality, serious misconduct, grave abuse of authority and gross ignorance of the law.

Judge Eliodoro B. Guinto of the Regional Trial Court, Branch 57, Angeles City was impleaded by the specific allegations in the complaint and he filed his comment on the administrative complaint as required by En Banc resolution dated June 22, 1989.

The charges against the respondents arose in connection with a civil case for ejectment filed on December 2, 1988 against the complainants by Leonida Usi, the plaintiff-lessor. The judgment in favor of Ms. Usi was affirmed on appeal to the Regional Trial Court (RTC) Branch 57, Angeles City, by Judge Eliodoro B. Guinto on November 28, 1988 with a modification ordering the complainants herein to pay back rentals.

As ascertained during an investigation of the matters raised in these cases, there were irregularities committed by the respondents as well as by RTC Judge Eliodoro B. Guinto consisting mainly of failure to serve copies of motions, orders and processes in connection with the ejectment case, despite the manifestation of a change of address of the complainants in their Answer with Counterclaim, and disregard of the complainants' deposit of supersedeas bond and required monthly rentals.

The report of the Investigator discloses the following facts:

On January 2, 1989, Ms. Usi filed two (2) motions, the first being the "Urgent Ex-Parte Motion to Remand the Case to the Court of Origin" filed with the Regional Trial Court without notice to complainants. Judge Guinto immediately granted this motion and ordered the remand of the case to the Municipal Trial Court. Then, Ms. Usi filed with the latter court an "Urgent Ex--Parte Motion for Immediate Execution", also without furnishing a copy to complainants' counsel.

On January 3, 1989, Judge Montemayor issued an Order granting the motion. On this same date, complainants filed with the Regional Trial Court their Opposition to Ms. Usi's Motion to Remand the case upon learning about the existence of such motion. Complainants also filed a "Petition for Review" with the Court of Appeals on this date.

On January 4, 1989, the writ of execution was endorsed to respondent Deputy Sheriff Lising. The writ states in its first paragraph that the case was for a "Sum of Money". (Exh. M. p. 30, Rollo)

On January 5, 1989, Ms. Usi filed an "Urgent Ex-Parte Motion to Break Open." Respondent Judge Montemayor immediately issued a "Break-Open" order naming the subject: building to be the "residential premises" of the complainants instead of the Manhattan Transfer Restaurant which is actually the subject of the ejectment case.

On January 6, 1989, without clarifying with the court about which premises to break-open, the respondent sheriff with the help of others broke open the Manhattan Transfer Restaurant, hauled away the property of complainants and levied upon the building to answer for the money judgment directed in the writ of execution. He also issued a "Sheriff's Notice of Sale", copies of which were merely posted at the municipal building and were not served upon complainants' counsel until requested by the latter from the court on January 9, 1989, together with copies of all motions filed and court orders issued after December 28, 1988.

The auction sale was set on January 16, 1989 but was held on January 17, 1989 beyond 5:00 p.m. despite further requests for its postponement until after the Court of Appeals shall have ruled on the petition for review. Ms. Usi was the sole bidder in the sale and bought the restaurant at a low price of P20,530.50.

After a review of the records, the Court is constrained to hold RTC Judge Guinto, although he was not nominally impleaded in the caption as one of the respondents, guilty of partiality in favor of the plaintiff-lessee, Ms. Usi.

Judge Guinto's decision, dated November 28, 1988, was released late so that it was received by complainants' counsel only on December 28, 1988 leaving the latter only one day before the long year end holidays starting with Rizal Day (December 30) to New Year's Day. On January 2, 1989, the first working day of the year, Judge Guinto granted the "Urgent Ex-Parte Motion to Remand the Case to the Court of Origin" filed on the same date. The records of the case were immediately transmitted to and received by the court of origin in the late afternoon of the same day despite the deposit of supersedeas bond and the monthly rentals and the fact that the 15-day period to file a petition for review with the Court of Appeals had not expired.

No urgency can be found from the contents of the motion except the citation of Section 18 of the Rule on Summary Procedure providing that the decision of the Regional Trial Court is immediately executory. The Court rules that this provision does not apply because the said decision did not actually affirm the trial court's decision "in toto" even if it was so stated because there was a modification. The motion's being "ex-parte" cannot justify the order granting it in the absence of, and without the slightest knowledge of the adverse party. Judge Guinto virtually ignored his judicial discretion to determine whether a motion may be acted upon ex-parte or not and left to the movant the determination of the nature of the motion.

On the basis of the records, the Court finds that the inaction of Judge Guinto on the complainants' Opposition to the Motion to Remand cannot be justified by the loss of jurisdiction caused by his own orders and the alleged responsibility of complainants to recall the records. It was incumbent upon him to have recalled *motu proprio* the records and allowed the filing of the petition for review and to hold the execution in abeyance. (Sec. 5 (g), Rule 135 of the Rules of Court). At any rate, he should not have ordered the immediate remand of the records.

In Adm. Matter No. MTJ-89-269, the Court finds Judge Montemayor guilty of gross negligence and grave partiality in issuing the questioned orders and writ.

He did not provide the complainants with a copy of his order granting the motion for immediate execution. He signed and issued the writ of execution which erroneously states that the case was for a "Sum of Money" and that the basis of the execution was the dispositive part of his decision which was, in fact, modified. The reliance of the respondent Judge on his personnel is manifested by the reckless signing of forms allegedly without ascertaining their correctness.

The "break-open" order issued by the Judge wrongly designated the premises to be residential. It was not

supported by a Sheriff's Return (which was filed about a week after) but only by a Sheriff's Affidavit showing that the "premises" were padlocked and complainants' address could not be found. It is doubtful whether the respondent Sheriff really inspected the "premises" as named in the Order and whether he actually tried to locate the address. A copy of the Order was not served on complainants.

Regarding the charge that the respondent Judge was not in his office at Branch I, Angeles City on January 5, 1989, it is a fact admitted by complainants' counsel that the respondent Judge is also Acting Presiding Judge for the Municipal Circuit Trial Court and he was supposed to be in Mabalacat-Magalang on that date. The Court sustains the respondent's objection to the presentation of evidence on this matter which was not alleged in the complaint, as well as the objection that the affidavit presented as evidence was hearsay. The further charge of Perjury contained in a supplemental complaint was not brought to the attention of the Court at the hearing and at the time of submission of the case for resolution. Hence, it is deemed waived.

In Adm. Matter No. P-89-292, the Court finds Deputy Sheriff Lising guilty of grave misconduct, oppression and partiality in the conduct of the writ of execution up to the auction sale. Respondent Sheriff executed an affidavit on January 4, 1989 stating that at 9:30 a.m. of that day, he verified the "premises". The writ of execution was actually endorsed to him at 9:45 a.m. of the same day. How could he have verified and ascertained that the building was padlocked and that the defendants' address could not be found, even before receiving the writ of execution? The records show that the affidavit was prepared by the plaintiff's counsel. While the respondent Sheriff did not clarify with the court the premises named in the "break open" order, he proceeded to break open the Manhattan Transfer Restaurant as early as 8:10 a.m. on January 6, 1989 with the help of others and without the knowledge of the complainants (proprietors thereof). Moreover, he issued a Notice of Sheriff's Sale on January 6, 1989 without sending a copy to complainants' counsel. He merely posted copies of the notice in the adjoining offices of the two branches of the Municipal Trial Court and the Office of the Ex-Officio Sheriff at Angeles City, all located on the same floor of the same building. Respondent Sheriff proceeded with the auction sale on January 17, 1989 after 5:00 p.m. despite the objection of complainant's counsel and sold the Manhattan Transfer Restaurant to plaintiff, Ms. Usi, at a very low price. These facts prove his gross violation of Sections 15 and 20 of Rule 39 of the Rules of Court.

In view of the foregoing, the Court RESOLVED that:

- (1) The allegations of the complaint that have inextricably impleaded JUDGE ELIODORO GUINTO and the evidence gathered during the investigation establish his having acted with grave partiality. The Court hereby sentences him to pay a fine of FIVE THOUSAND PESOS (P5,000.00) as penalty;
- (2) Respondent Municipal Trial Court JUDGE JOSE G. MONTEMAYOR, Branch I, Angeles City is also found guilty of having acted with grave partiality and gross negligence in the performance of his duties. The Court sentences him to pay a fine of EIGHT THOUSAND PESOS (P8,000.00) as penalty; and
- (3) Respondent Deputy Sheriff TOMASITO B. LISING is guilty beyond reasonable doubt of the offense of grave misconduct, oppression and grave partiality. The Court hereby sentences him to suffer the penalty of dismissal from service with forfeiture of retirement benefits, except the value of his accrued leaves and with prejudice to future reinstatement in the Government service.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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